

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

**August 10, 2023 at 10:00 a.m.**

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1. [20-90349-E-11](#)      **R. MILLENNIUM TRANSPORT,**      **MOTION FOR RELIEF FROM**  
[CCR-1](#)                      **INC.**                                      **AUTOMATIC STAY**  
                                    **David Johnston**                      **7-27-23 [209]**  
**HEESUN KIM VS.**

**SUBCHAPTER V**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 27, 2023. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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**August 10, 2023 at 10:00 a.m.**

**- Page 1 of 18 -**

**The Motion for Relief from the Automatic Stay is granted and: (1) the automatic stay is annulled with respect to the proceedings in the State Court Action taken after the commencement of this Bankruptcy Case through the entry of this order, and (2) modified to allow Movant to obtain a final judgment in the State Court Action and enforce such judgment against any insurance proceeds for liability of the Debtor.**

Heesun Kim ("Movant") requests several types of relief in this case. First, the annulment of the stay to retroactively permit Movant's actions taken in *Heesun Kim v. Bikramjit Singh Dhillon, dba BD Express, R. Millenium Transport, Inc., et al.*, Superior Court of California, County of Alameda, Case No. RG21103207 (the "State Court Litigation") after the bankruptcy case was filed.

Second, Movant seeks to terminate the stay going forward. Movant has provided the Declaration of Heesun Kim to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by R. Millennium Transport ("Debtor").

## **DISCUSSION**

### **Annulment of Stay**

As is well established in the Ninth Circuit, an act taken in violation of the automatic stay is void, not merely voidable. *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001); (*In re Schwartz*), 954 F.2d 569, 571 (9th Cir. 1992).

Congress provides for the court to annul the automatic stay so as to render what was void to not be void. However, retroactive annulment of the automatic stay is within the discretion of the court. *Nat'l Env'tl. Waste Corp. v. City of Riverside (In re Nat'l Env'tl. Waste Corp.)*, 129 F.3d 1052, 1054 (9th Cir. 1997). The court, in making a case-by-case review, must balance the equities to determine if annulment is justified. *Id.* at 1055. Though not dispositive, most courts consider two factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.*

*In re Fjeldsted*, the bankruptcy Appellate Panel for the Ninth Circuit expanded the factors a court may consider when deciding whether to annul the stay: the number of times a debtor has filed a petition; the extent of any prejudice, including to a bona fide purchaser; the debtor's overall good faith; the debtor's compliance with the Code; how quickly the creditor moved for annulment; and how quickly the debtor moved to set aside the action which occurred. *In re Fjeldsted*, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003).

The court reviews the various framework of factors and states how they apply in this Motion as follows:

### ***Nat'l Env'tl. Waste Corp* Factors**

- (1) Whether the creditor was aware of the bankruptcy petition;

Movant claims they were unaware of Debtor's bankruptcy petition, because Movant was not listed in Debtor's schedules nor was listed on Debtor's list of Creditors. Movant claims Debtor's State Court Counsel also did not know of the bankruptcy proceedings, as they filed an answer on December 15, 2021, while the bankruptcy case was pending, with no mention of the bankruptcy.

- (2) Whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor.

Movant does not provide this evidence. Rather, Movant states Debtor was unaware of Movant's claim, which is likely why they were not listed in Debtor's schedules or list of creditors.

### ***In Re Fjeldsted Factors***

Under the *In re Fjeldsted* factors, the Panel looked at refining and providing further guidance to the court as to factors that may apply. Relevant factors here include:

- A. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;

Reiterating the foregoing, Movant was unaware of the bankruptcy. Movant did not receive notice of the bankruptcy on the master address list provided by the Debtor. It does not appear Movant took any actions upon receiving notice of the bankruptcy case.

- B. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violating conduct;

It appears Movant received notice of the bankruptcy on October 21, 2022, when the Notice of Stay of Proceedings was filed. This was roughly 10 months ago.

- C. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;

There is no evidence Movant took further action in violation of the stay.

- D. Whether annulment of the stay will cause irreparable injury to the debtor;

There is no showing that annulling the stay will cause irreparable injury to the Debtor. Movant states Debtor's Counsel is not opposed to annulling the stay, and the parties are anticipating heading to trial. Exhibit E, Dckt. 212, Declaration, Dckt. 213.

Additionally, the annulment of the automatic stay and further relief is to allow Movant to pursue recovery from applicable insurance proceeds.

### **DISCUSSION**

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the

automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at \*8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at \*9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at \*6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the State Court Litigation and evidence provided warrants both annulment of the automatic stay and continued relief from stay for cause. Therefore, judicial economy dictates that the state court proceeding be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order annulling and modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment for any amounts in excess of the insurance proceeds against Debtor, David M. Sousa (“the Chapter 11 Trustee”), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Heesun Kim (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are annulled effective May 15, 2020 (the date this Bankruptcy Case was commenced) through the entry of this Order, and modified from the date of the entry of this Order as such stay is applicable to R. Millennium Transport, Inc. (“Debtor”) to allow Movant, its agents, representatives, and successors, to proceed with litigation in *Heesun Kim v. Bikramjit Singh Dhillon, dba BD Express, R. Millenium Transport, Inc., et al.*, Superior Court of California, County of Alameda, Case No. RG21103207 (the “State Court Litigation”).

**IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to enforcement of any judgment, to the extent being enforced against the

Debtor in excess of the insurance proceeds, against Debtor, David M. Sousa (“the Chapter 11 Trustee”), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

# FINAL RULINGS

2. [23-90111](#)-E-11      MICHAEL HOFMANN      MOTION FOR RELIEF FROM  
                                 Brian Haddix      AUTOMATIC STAY  
                                      7-24-23 [[122](#)]
- RURAL COMMUNITY ASSISTANCE  
CORPORATION VS.
- SUBCHAPTER V

**Final Ruling: No appearance at the August 10, 2023 Hearing is required.**  
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**Pursuant to prior court order, Dckt. 127, the hearing on the Motion for Relief was continued to September 7, 2023 at 10:00 a.m.**

AMERICAN AGCREDIT, PCA,  
AMERICAN AGCREDIT FLCA VS.

SUBCHAPTER V

**Final Ruling: No appearance at the August 10, 2023 Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 11 Subchapter V Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The hearing on the Motion for Relief is continued to September 7, 2023 at 2:00 p.m.** to be heard in conjunction with the Confirmation Hearing.

American AgCredit, FLCA (“FLCA”) and American AgCredit, PCA (“PCA”), collectively, “Movants,” seek relief from the automatic stay, or, in the alternative, for adequate protections of their interest.

The court has been presented with a 17-page motion (Dckt. 39), 19-page memorandum of points and authorities (Dckt. 47), 15-pages of declarations (Dckts. 41, 42), and 365-pages worth of exhibits (Dckts. 43, 44, 46). In the Motion, Movant instructs the court to review the hundreds and hundreds pages of exhibits to identify the collateral and the various obligations to which they relate.

The court has begun the task of parsing through the Motion and supporting documents to determine not only whether relief is appropriate, but also what relief Movants believe they are entitled to. Due to the pages and pages and pages of pleadings and exhibits, much work remains to be done.

From the court's initial review of the Motion, Movants are asserting the following as grounds to terminate the stay because:

1. Improper purpose:

Movants claim the case was filed as part of an ongoing family dispute. Movants claim there were various disputes between father and son, Mr. George Arata, Sr. ("Mr. Arata") and Mr. George Arata, Jr. ("Son"). Motion, Dckt. 39 at 4 ¶ 3.

2. Debtor has not paid the fully matured loan to Movant PCA.

Movant has provided a 3.5 page "summary" of the loan transaction between Movant PCA and Debtor. Motion, Dckt. 39 at 5-8. The history of the loan is more than confusing to the court, with numerous parties, assets, and interests described.

It appears to the court that Debtor signed two promissory notes in favor of Movant PCA:

(1) February 26, 2021 - in the amount of \$150,000, and

(2) May 9, 2022 - in the amount of \$200,000.

The Motion states that the loans contained Supplemental Loan Agreements that provide "Continuing Guaranties" of non-debtor parties. Additionally, the Motion states the Supplemental Loan Agreement provides that the "collateral" described in the Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing, secures obligations related to various loans. Motion, Dckt. 39 at 5, 7. It would take considerable amount of time and resources for the court to parse through the hundreds of pages of supporting documents to determine the relationship between the PCA Loan, the aforementioned documents, and these various loans. It is not clear to the court what Movants are trying to establish.

The Motion also states the PCA Deed of Trust secures real and personal property concerning agricultural real property in Brentwood, California. Motion, Dckt. 39 at 6:9-11. Additionally, the Motion states numerous non-debtors guaranteed the debt. *Id.* at 6, . The Motion states Debtor and numerous non-debtors signed security agreements granting interest to Movant PCA in their personal property, as well as a continuing guarantee. *Id.* at 6, 7. Movant PCA states they filed a UCC with California Secretary of State. *Id.* at 8.

Movants state Debtor's Loan of Movant PCA matured on April 1, 2023. The unpaid indebtedness due totals \$174,800.87, of which \$155,019 is principal, the remainder interest and late charges. *Id.* at 8:5-7.

3. Non-Debtor Arata Farm Management, Inc. ("AFM") has failed to pay their fully matured loan.

Movants state there were two loan transactions with non-debtor AFM. Both AFM loans were signed by guarantors, and Supplemental Loan Agreements provide that the AFM Loan and Continuing Guaranties are secured by the PCA Deed of Trust (the court assumes this is the same Deed of Trust as above). Additionally, the Supplemental Loan Agreements states the collateral described in the PCA Deed



of Trust also secures obligations to various loans, of which the court does not know the nature of the loans. The AFM Loan matured on April 1, 2023. Motion, Dckt. 39 at 8-10.

4. Guarantors have failed to pay obligations due to Movant PCA, secured by the PCA Deed of Trust and applicable security agreements.

As mentioned above, Movant contends there are numerous non-debtor guarantors on both loans.

5. Movant PCA has lack of adequate insurance on their collateral.

Movant contends they are entitled to a 10.75% interest rate on their fully matured loan. Motion, Dckt. 39 at 8.

6. The family dispute has jeopardized and prejudiced the interests of Movants.

Movants are informed there is a dispute between Mr. George Arata, Sr., the President of Debtor, and his son. Motion, Dckt. 39 at 13. The disputes concern equipment owned by Debtor. *Id.* Movants were informed that Mr. Arata's son has took control and retained equipment over the objection of Debtor. *Id.* Therefore, Mr. Arata's son may be in possession of equipment that is Movants' collateral. *Id.*

7. Debtor does not have any current income or business operations.

8. Non-debtors have defaulted on the Movant FLCA loan.

Movants state Movant FLCA has a senior in priority Deed of Trust. The loan transactions of FLCA are to various non-debtor parties. The FLCA Deed of Trust secures the non-debtor loan and encumbers the real and personal property in Brentwood, California. The non-debtors signed a "Notice of Advance Under Deed of Trust." As of May 2, 2023, there remains an unpaid indebtedness due to FLCA.

9. Movants have not properly been joined in the partition action.

There is an ongoing partition action regarding the Arata family. Motion, Dckt. 39 at ¶ 9. Movants state neither were named as defendants in the Partition Action. Movants state if they are not named as defendants, they must intervene because the action seeks to partition real and personal property subject to the PCA Deed of Trust and FLCA Deed of Trust.

10. Both Movants need relief from the stay given the structure of the Movant PCA loans, and cross collateralization. Motion, Dckt. 39 at 14 ¶ 16.

11. Movants request waiver of the 14-day stay period provided in the Federal Rules of Bankruptcy Procedure. Motion, Dckt. 39 at 17.

## **DEBTOR/DEBTOR IN POSSESSION'S OPPOSITION**

Debtor/Debtor in Possession filed an Opposition on June 5, 2023. Dckt. 53. Debtor/Debtor in Possession opposes Movants' Motion on the grounds:

1. Adequately Protected - The debt owed to Movant PCA is secured by farm equipment with equity at least twice as much as the debt. Additionally, the real property that secures the debt has over \$3,000,000 in equity to support the debt. Debtor is not opposed to making interest payments in the interim.
2. Proper Purpose - The Chapter 11 case was filed for a proper purpose, and was prompted by a lawsuit filed by a fuel supplier. Any underlying family disputes have mostly been resolved. The Plan will provide payment in full of all claims.
3. Assets Are Necessary for an Effective Reorganization - The liquidation of all assets will be the thrust of a Chapter 11 Plan.
4. No basis for waiver of Rule 4001(a)(3) - No basis for the waiver was pleaded in the Motion.

### **MOVANTS' REPLY BRIEF**

Movants filed a reply brief on June 8, 2023. Dckt. 57. Movants state:

1. The family dispute has not yet been resolved. Mr. Arata's son is attempting to transfer (unidentified) property of Debtor (which is property of the bankruptcy estate to third-parties. This would appear to be a sanctionable violation of the automatic stay – which the Debtor/Debtor in Possession and its management, as fiduciaries, have a fiduciary obligation to immediately prosecute to cease such violation.
2. The proposed sale of the equipment is illusory. No proposed adversary proceeding for turnover to recover equipment seized by Mr. Arata's son has been filed.
3. Debtor's PCA loan is fully due and payable, as well as the PCA loan to AFM.
4. The PCA and FLCA loans are secured by the non-debtor real property, subject to the Partition Action.
5. The guarantors are obtaining the benefit of the filing.
6. Debtor has no income nor evidence of insurance.
7. The proposed sale of the equipment to pay creditors reflects a transaction between insiders.
8. Waiver of the 14-day stay is proper because Movants have been delayed long enough.

## **DISCUSSION**

The court has been presented with a seemingly complex situation. The complexity involves not only the facts surrounding the underlying case, but also the way in which Movants have crafted their Motion and supporting documents and presented it to the court.

Movants Motion provides 17-pages worth of complicated history between Movants, the Debtor, and non-debtor parties, and their assets and liabilities. The court has already taken considerable time and resources to review various documents Movants have provided. Even so, the court is still puzzled with the history of the various interests and assets of Debtor, Movants, and non-debtor parties.

The court is inclined to request supplemental briefing on the matter, to allow Movants to clearly and concisely state the relief requested and grounds for relief. Absent supplemental briefing, the court is tasked with flipping through the hundred of documents just to piece together the relationship between the various parties, interests, and assets.

### **Clarification at the Hearing**

At the hearing, the court determined that entering an order granting relief for Movants to proceed against non-debtor obligors and property that is not property of the bankruptcy estate was proper. Though it can be argued that the automatic stay does not apply to such non-debtor parties and property that is not property of the Bankruptcy Estate, entry of the order to make it clear to third-parties and the non-bankruptcy courts is warranted.

In the discussion with the Parties, it was agreed that the order identifying the parties and property as not being the debtor or property of the Bankruptcy Estate was sufficient.

Counsel for Movant shall prepare and lodge with the court a proposed order consistent with the above ruling.

The court will enter a separate order granting the forgoing relief.

The court continues the hearing as to the remaining issue and parties - whether relief should be granted with respect to property of the Bankruptcy Estate.

### **Status Conference Statement**

Movants filed a Status Conference Statement requesting the Motion be continued to September 7, 2023 at 10:00 a.m., as the Confirmation Hearing is currently set for September 7, 2023 at 2:00 p.m.

The court continues the hearing on the Motion for Relief to September 7, 2023 at 2:00 p.m. to be heard in conjunction with the Confirmation Hearing.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Stay filed by American AgCredit, FLCA (“FLCA”) and American AgCredit, PCA (“PCA”), collectively, “Movants,” having been presented to the court, the court determining that bifurcation of granting of relief was proper and by separate order as provided in Federal Rule of Civil Procedure 54(b) and Federal Rules of Bankruptcy Procedure 7054, 9014 granting relief for Movants to enforce their rights against non-debtor obligors and non-bankruptcy estate property, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion for Relief is continued to **September 7, 2023 at 2:00 p.m.** to be heard in conjunction with the Confirmation Hearing.

**BANK OF AMERICA, N.A. VS.**

**4 thru 5**

**Final Ruling:** No appearance at the August 10, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 and Office of the United States Trustee on June 21, 2023. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Thor Motor Four Winds Siesta, VIN ending in 7328 ("Vehicle"). The court notes, Movant's Motion characterizes this Vehicle as a "SIES," however, upon review of Debtor's Schedules and Movant's exhibits, it appears the Vehicle is actually a "Siesta." The moving party has provided the Declaration of Shanine Duviella to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Charles Houston Loveland ("Debtor").

Movant argues Debtor has not made 2 post-petition payments, with a total of \$1,289.46 in post-petition payments past due. Declaration, Dckt. 29. Movant also provides evidence that there is 1 pre-petition payments in default, with a pre-petition arrearage of \$644.73. *Id.*

**Valuation from Debtor's Schedules A/B and D**

Movant has also provided a copy of the Debtor's Schedules A/B and D for purpose of establishing the value of the vehicle. Debtor provided the vehicle's value to be \$45,000.00 in the schedules and Movant relies on this valuation.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$64,048.25 (Declaration, Dckt. 29), while the value of the Vehicle is only \$45,000, as stated in Schedules A/B and D filed by Debtor. Dckt. 1. Additionally, Debtor's Statement of Intention reflects Debtor's intention to surrender the Vehicle to Movant. *Id.*

### **11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### **11 U.S.C. § 362(d)(2)**

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Bank of America, N.A. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2014 Thor Motor Four Winds Siesta, VIN ending in 7328 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

WELLS FARGO BANK, N.A. VS.

**Final Ruling:** No appearance at the August 10, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 13, 2023. By the court’s calculation, 58 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Relief from the Automatic Stay is granted.**

Wells Fargo Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2020 Ford Truck Ranger, VIN ending in 0567 (“Vehicle”). The moving party has provided the Declaration of Robert Keith to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Charles Loveland (“Debtor”).

Movant argues Debtor has not made 1 post-petition payment, with a total of \$548.26 in post-petition payment past due. Declaration, Dckt. 18. Movant also provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of \$1,096.52. *Id.*

#### **Valuation from Debtor’s Schedules A/B and D**

Movant has also provided a copy of the Debtor’s Schedules A/B for purpose of establishing the value of the vehicle. Debtor provided the vehicle’s value to be \$22,860.00 in the schedules and Movant relies on this valuation. Dckt. 1.



## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$26,055.06 (Declaration, Dckt. 18), while the value of the Vehicle is only \$22,860.00, as stated in Schedules A/B and D filed by Debtor. Dckt. 1. Additionally, Debtor's Statement of Intention reflects Debtor's intention to surrender the Vehicle to Movant. *Id.*

### 11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

### 11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Wells Fargo Bank, N.A. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2020 Ford Truck Ranger, VIN ending in 0567 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.